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APPLICANT:	FUELLING, RICHARD A.	)	ART UNIT: 3632
		)	
APPLICATION #:	10/624,152	)	EXAMINER:STERLING, AMY JO
		)	
FILED:	7/21/2003	)	
FOR:	MODULAR ACCESSORY HOLDER		

Enclosed is:

1. A Revised Appeal Brief, in triplicate.

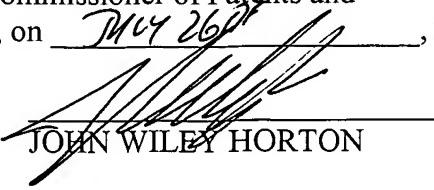
Respectfully submitted this 26<sup>th</sup> day of JULY, 2006.

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**In the United States Patent and Trademark Office**

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**APPEAL BRIEF OF PETITIONERS**

Pursuant to 37 CFR §§ 1.192(a) and 41.37, the Petitioners, Richard Fuelling and Michael Rowing hereby serve their Appeal Brief.

**I. STATEMENT OF REAL PARTY IN INTEREST**

The Applicants in this matter are Richard Fuelling and Michael Rowing. As the Applicants have not assigned any rights in this invention, they are the real parties in interest.

**II. STATEMENT AS TO RELATED APPEALS AND INTERFERENCES**

To the knowledge of Applicants, there are presently no related appeals or interferences.

**III. STATEMENT AS TO THE STATUS OF THE CLAIMS**

Claims 1 – 3 of the pending application currently stand rejected. Petitioners are appealing the decisions to each and every rejected claim. A listing of the status of each and every pending claim is as follows:

1. Rejected.
2. Rejected.
3. Rejected.

The Rejection as to each and every rejected claim is appealed.

#### IV. STATUS OF AMENDMENTS

Applicant has not submitted any amendments subsequent to final rejection.

#### V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention relates to a modular accessory holder which may be used to mount various accessories to a boat or other vehicle. The invention includes a receiver which is permanently mounted to a surface of the vehicle. The receiver's top surface opens into a vertical slot with tapering side walls. A separate plate slides into the slot. The separate plate has corresponding side walls that mate with the tapering side walls within the receiver. A pair of horizontal steps on the plate come to rest against the receiver's top surface. Although the side walls of the plate rest closely against the side walls of the slot in order to minimize relative motion, the mating of the pair of steps to receiver's top surface prevents the plate from becoming jammed in the receiver.

In the following section, the Applicant attempts to comply with 37 CFR §41.37(c)(5).

There is one independent claim presented in this appeal – Claim 1. Claim 1 is stated again below, with annotations to the reference numbers and drawings figures from the original specification.

1. A device which allows a user to mount a variety of objects to a fixed point (FIG. 4), comprising:

- a. a receiver (FIG. 2, reference numeral 14; page 5 lines 11-14), fixedly attached to said fixed point, wherein said receiver has
  - i. a top surface(FIG. 2, reference numeral 20; page 5 line 15);

- ii. a slot opening in said top surface and descending downward therefrom (FIG. 2, reference numeral **28**; page 5 lines 15-16), having an upper portion (portion proximal top surface **20**) and a lower portion (portion near fastener **18** distal top surface **20**);
  - iii. wherein said slot is bounded by a back wall (FIG. 2, reference numeral **22**), a front wall (FIG. 3, reference numeral **30**; page 5 lines 15-16), a first side wall (FIG. 3, reference numeral **24**; page 5 lines 15-16), and a second side wall (side wall opposite first side wall, reference numeral **24**; page 5 lines 15-16);
  - iv. wherein said first and second side walls of said slot taper toward each other so that said upper portion of said slot is wider than said lower portion of said slot (taper illustrated in FIGs. 2-4, and described in specification on page 5, lines 16-17);
- b. a modular mount (reference numeral **32** in FIG. 4; page 5 line 19), including
  - i. attachment means for fixedly attaching one of said variety of objects to said modular mount (for example, rod holder **42** and gusset **44** shown in FIG. 5 and described page 6 lines 10-12); other attachment means illustrated in FIGs. 6-7 and described page 6 line 20 through page 7 line 15);
  - ii. a plate (FIG. 4, reference numeral **34**; page 5 line 19 through page 6 line 1);
  - iii. a tang descending from said plate (FIG. 4, reference numeral **36**; page 5 line 19 through page 6 line 9);
  - iv. a first step proximate a junction between said tang and said plate (FIG. 4,

- reference numeral 38; page 6 lines 5-8);
- v. a second step proximate said junction between said tang and said plate (opposite the first step in FIG. 4, reference numeral 38; page 6 lines 5-8);
  - vi. wherein said tang has a back wall (side facing away from the viewer in FIG. 4), a front wall (side facing toward the viewer in FIG. 4), a first side wall (FIG. 4, reference numeral 40; page 6 lines 1-2 and lines 6-8), and a second side wall (opposite the first side wall in FIG. 4, reference numeral 40; page 6 lines 1-2 and lines 6-8);
  - vii. wherein said first and second side walls of said tang taper toward each other so that said upper portion of said tang is wider than said lower portion of said tang (taper illustrated in FIG. 4, and described in specification at page 6, lines 1-2);
  - viii. wherein said first side wall of said tang is oriented such that when said tang is inserted into said slot said first side wall of said tang will be parallel to said first side wall of said slot (illustrated in FIGs. 4-5; page 6 lines 2-9);
  - ix. wherein said second side wall of said tang is oriented such that when said tang is inserted into said slot said second side wall of said tang will be parallel to said second side wall of said slot (illustrated in FIGs. 4-5; page 6 lines 2-9);
  - x. wherein said first step is positioned to bear against said top surface while maintaining a small clearance between said first side wall of said tang and said first side wall of said slot (illustrated in FIG. 5, and described in specification on page 6, lines 5-9) ;

- xi. wherein said second step is positioned to bear against said top surface while maintaining a small clearance between said second side wall of said tang and said second side wall of said slot (illustrated in FIG. 5, and described in specification on page 6, lines 5-9); and
- xii. wherein the weight of said modular mount will tend to retain said tang in said slot (inherent based on design).

## VI. GROUNDS OF REJECTION TO BE REVIEWED UPON APPEAL

1. Whether claims 1-3 fail to particularly point out and distinctly claim the subject matter which Applicants regard as their invention and are therefore unpatentable under 35 U.S.C. § 112, second paragraph.
2. Whether claims 1-2 are anticipated by U.S. Patent No. 2,174,140 to Schofield and are therefore unpatentable under 35 U.S.C. § 102(b).

## VII. ARGUMENT

- A. The requirement to distinctly claim the subject matter of the invention is satisfied with respect to Claim 1.

The Examiner rejected Claims 1-3 under 35 U.S.C. § 112, second paragraph arguing that the claims fail to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner argued that the term “small” as used in claim 1, is a relative term which renders the claim indefinite.

If one skilled in the art would understand the bounds of the claim when read in light of the specification, then the claim satisfies section 112, paragraph 2. Miles Labs., Inc. v. Shandon, Inc., 997 F.2d 870, 875, 27 USPQ2d 1123, 1126 (Fed.Cir. 1993). The Court of Appeals for the

Federal Circuit has explained:

We have not held that a claim is indefinite merely because it poses a difficult issue of claim construction. We engage in claim construction every day, and cases frequently present close questions of claim construction on which expert witnesses, trial courts, and even the judges of this court may disagree. Under a broad concept of indefiniteness, all but the clearest claim construction issues could be regarded as giving rise to invalidating indefiniteness in the claims at issue. But we have not adopted that approach to the law of indefiniteness. We have not insisted that claims be plain on their face in order to avoid condemnation for indefiniteness; rather, what we have asked is that the claims be amenable to construction, however difficult that task may be. If a claim is insolubly ambiguous, and no narrowing construction can properly be adopted, we have held the claim indefinite. If the meaning of the claim is discernible, even though the task may be formidable and the conclusion may be one over which reasonable persons will disagree, we have held the claim sufficiently clear to avoid invalidity on indefiniteness grounds.

Exxon Research and Engineering Co. v. U.S., 265 F.3d 1371, 1375 (Fed.Cir. 2001).

Petitioners respectfully submit that the term “small clearance” as used in claim 1 is readily understandable to those that are skilled in the art. Petitioners’ specification provides substantial support for this limitation. For example, as explained in the original application, at Page 6, Lines 6-8, “the geometry is designed so that the two steps **38** will mate against top surface **20** just before the two side walls **40** on tang **36** mate against the two side walls **24** within receiver **14**.<sup>1</sup>” The specification continues, elaborating on Page 6, Lines 15-17, “when steps **38** are hard against top surface **20**, the two side walls **40** on tang **36** are preferably separated approximately .010 inches from the two side walls **24** within receiver **14**.<sup>2</sup>”

One that is ordinarily skilled in the art may understand “small clearance” to be a

little broader than the .010 inches mentioned in the specification, however. One that is skilled in the art is likely to understand this measure of clearance based on the stated functionality of the clearance. As explained in the specification, at Page 6, Lines 17-19, “the two pairs of side walls are close enough to prevent any significant rotation of modular mount 32 within receiver 14, and to prevent modular mount 32 from separating from receiver 14. But, modular mount 32 will not become stuck within receiver 14.” Accordingly, when practicing the current invention, one that is skilled in the art would make the clearance sufficiently small to prevent significant rotation of the modular mount, but would be large enough so that the modular mount would not become stuck in the receiver.

Since the claims are “amenable to construction,” Petitioner respectfully submits that the requirements of section 112, second paragraph have been satisfied.

B. Claim 1 is not anticipated by Schofield

Claims 1 and 2 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,174,140 to Schofield (1938). The Schofield device is intended to link two objects together. Examples given are a mop handle being linked to a mop head and a flag pole being linked to a wall bracket.

In order for a section 102(b) reference to be valid as prior art, every element and limitation of the claimed present invention - as literally defined in the claims - must be disclosed within the piece of prior art. *Jamesbury Corp. v. Litton Indus. Products*, 756 F.2d 1556, 225 USPQ 253 (Fed.Cir. 1985); *Atlas Powder Company v. du Pont*, 750 F.2d 1569 (Fed.Cir. 1984); *American Hospital Supply v. Travenol Labs*, 745 F.2d 1 (Fed.Cir. 1984). The Applicant respectfully submits that the amended claims are not anticipated by Schofield under this

standard.

Schofield does disclose a tapered slot interfacing with tapered side walls on an interlocking tang. However, the claims in the present invention recite a first and second step located proximate the joint between the plate and the tang (please see element "38" in FIG. 4). These steps bear against the top surface of the receiver and arrest the further downward motion of the tang into the slot. Significantly, the downward motion is arrested just before the tapered side walls of the tang become wedged against the tapered side walls of the slot. As explained in the original application, at Page 6, Lines 5-9:

The interrelationship between side walls **40** and steps **38** is significant to the invention. The geometry is designed so that the two steps **38** will mate against top surface **20** just before the two side walls **40** on tang **36** mate against the two side walls **24** within receiver **14**. Without this feature, the mating of the side walls can produce a wedging effect which firmly lodges tang **36** within receiver **14**.

The present invention is intended primarily for marine applications. The components will be subjected to moisture, salt spray, and other corrosive elements. Thus, the ability to secure the modular holder without a wedging effect causing it to become stuck is significant. As stated in the original disclosure at Page 6, lines 17-19:

When steps **38** are hard against top surface **20**, the two side walls **40** on tang **36** are preferably separated approximately .010 inches from the two side walls **24** within receiver **14**. The two pairs of side walls are close enough to prevent any significant rotation of modular mount **32** within receiver **14**, and to prevent modular mount **32** from separating from receiver **14**. But, modular mount **32** will not become stuck within receiver **14**.

Gravity then holds the mount in place - owing to the wedge's orientation.

Schofield does not disclose a step feature positioned to prevent the tapered tang from becoming wedged in the tapered slot. In fact, Schofield teaches away from such a limitation since the "tang" of Schofield is designed to be wedged quite firmly into the tapered slot.

Schofield's FIGs. 1 and 2 show "member 17" as a resilient metal stamping with a split running from end to end. This split allows the wedge-shaped wings on "member 17" to compress inward as they are forced into the tapered slot. The two "projections 20" then snap into corresponding "cut-outs 15" to secure the joint. This design ensures that the "tang" will always be firmly wedged into the tapered slot. If subjected to a marine environment, the two elements of Schofield would soon become fused together.

The Examiner cites Schofield's lugs (reference numerals 20) for teaching Petitioners' "steps." Petitioners respectfully submit that if Schofield's lugs are construed as "steps," Schofield cannot be cited for teaching Petitioners limitations requiring that the steps be positioned to bear against the top surface while maintaining small clearances between the side walls of the tang and the side walls of the slot. (Claim 1, elements (b)(x) and (b)(xi)). Schofield's "steps" do not bear against a top surface, nor are they configured to maintain small clearances between the side walls of the tang and the side walls of the slot.

Accordingly, since Schofield does not disclose all of the elements of claim 1, Petitioners respectfully submit that claim 1 should be allowed.

In view of the prior arguments and citations of authority, the Petitioner believes claims 1-3 are in condition for allowance.

WHEREFORE, the Applicant hereby requests that the Board of Patent Appeals and Interferences reverse the rejections previously entered by the Examiner.

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## **APPENDIX CONTAINING A COPY OF THE APPEALED CLAIMS**

1. A device which allows a user to mount a variety of objects to a fixed point, comprising:
  - a. a receiver, fixedly attached to said fixed point, wherein said receiver has
    - i. a top surface;
    - ii. a slot opening in said top surface and descending downward therefrom, having an upper portion and a lower portion;
    - iii. wherein said slot is bounded by a back wall, a front wall, a first side wall, and a second side wall;
    - iv. wherein said first and second side walls of said slot taper toward each other so that said upper portion of said slot is wider than said lower portion of said slot;
  - b. a modular mount, including
    - i. attachment means for fixedly attaching one of said variety of objects to said modular mount;
    - ii. a plate;
    - iii. a tang descending from said plate;
    - iv. a first step proximate a junction between said tang and said plate;
    - v. a second step proximate said junction between said tang and said plate;
    - vi. wherein said tang has a back wall, a front wall, a first side wall, and a second side wall;
    - vii. wherein said first and second side walls of said tang taper toward each other so that said upper portion of said tang is wider than said lower portion of said tang;
    - viii. wherein said first side wall of said tang is oriented such that when said

tang is inserted into said slot said first side wall of said tang will be parallel to said first side wall of said slot;

- ix. wherein said second side wall of said tang is oriented such that when said tang is inserted into said slot said second side wall of said tang will be parallel to said second side wall of said slot;
- x. wherein said first step is positioned to bear against said top surface while maintaining a small clearance between said first side wall of said tang and said first side wall of said slot;
- xi. wherein said second step is positioned to bear against said top surface while maintaining a small clearance between said second side wall of said tang and said second side wall of said slot; and
- xii. wherein the weight of said modular mount will tend to retain said tang in said slot.

2. A device as recited in claim 1, wherein said receiver has an open front in order to allow clearance for said mounting means.

3. A device as recited in claim 1, wherein:

- a. said one of said variety of objects comprises a fishing rod; and
- b. said mounting means comprises a hollow and tubular rod holder attached to said modular mount.

## **EVIDENCE APPENDIX**

No evidence has been submitted pursuant to 37 CFR §§ 1.130, 1.131, or 1.132.

## **RELATED PROCEEDING APPENDIX**

To the Applicant's knowledge, there are no related proceedings.